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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re A.C., a Person Coming  
Under the Juvenile Court Law.

B296551

THE PEOPLE,

Los Angeles County  
Super. Ct. No. MJ22359

Plaintiff and Respondent,

v.

A.C.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of  
Los Angeles County, William A. Crowfoot, Judge. Affirmed  
as modified.

Mary Bernstein, under appointment by the Court  
of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters,  
Chief Assistant Attorney General, Susan Sullivan Pithey,  
Assistant Attorney General, David E. Madeo and William H.  
Shin, Deputy Attorneys General, for Plaintiff and Respondent.

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The juvenile court adjudged A.C. a ward of the court for offenses he committed when he was 10 years old. Effective January 1, 2019, Senate Bill No. 439 (SB 439) amended Welfare and Institutions Code section 602<sup>1</sup> to eliminate juvenile court jurisdiction over minors under 12 years old who committed offenses like A.C.'s. A.C. moved to dismiss his entire case, including the original charges in 2013 and the adjudication in 2014. The juvenile court denied the motion, and A.C. appeals. We affirm as modified, concluding the juvenile court lost jurisdiction over A.C. on the effective date of the amendment to section 602.

### **BACKGROUND**

On July 24, 2013, a juvenile wardship petition under former section 602 of the Welfare and Institutions Code alleged A.C. came under the juvenile court's jurisdiction for committing three counts of assault with a deadly weapon (a knife). A.C., born February 25, 2003, was 10 years old.

The probation report stated A.C. was playing with three other boys at a playground on May 23, 2013 when one boy, Johnny L., asked A.C. if he wanted to wrestle. They wrestled in the grass next to the playground. A.C., red-faced, got up off the ground, walked to his backpack, and grabbed something. He walked toward all three boys, unfolded a knife, and waved it toward them in a stabbing motion, yelling: " 'Fuck you, come on.' " A.C. jabbed the knife into Johnny L., leaving a red mark. Another boy, Fabian A., pushed A.C. away and ran to his apartment to tell his mother, while A.C. picked up his backpack

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise stated.

and ran to his apartment. Sheriff's deputies responding to the mother's 911 call heard the same story from the three boys, who reported A.C. said: " 'I'm gonna stab you guys,' " and " 'This is going in your stomach Johnny.' " The deputies detained A.C. and advised him of his right to counsel. A.C. told them he hid the knife inside a "Happy Birthday" bag in the apartment. He waved the knife to scare the boys because Johnny L. had grabbed his neck too hard. A.C. denied jabbing him.

A.C. was 11 years old on September 22, 2014, when he admitted count 2 of the petition (assault with a deadly weapon upon Johnny L.). A.C. admitted it was wrong to pull out the knife and jab it at someone, and the court found he understood the wrongfulness of his act. The juvenile court found count 2 to be true, dismissed counts 1 and 3, sustained the petition, declared A.C. a ward, and placed him home on probation.

On March 23, 2015, the probation department filed a notice of violation of probation. (§ 777, subd. (a).) A.C., then 12 years old and living with his father, admitted count 1 of the notice (not consistently attending counseling, fighting in public, and behaving badly in school). The juvenile court found A.C. had violated the probation requirement that he follow all rules, and ordered him placed on home arrest under the Community Detention Program (CDP). On May 19, 2015, A.C. was detained for not complying with his CDP order. On May 21, the juvenile court ordered the termination of CDP and detained A.C. in juvenile hall. On May 28, the court returned A.C. home under CDP, and continued the case to allow probation to interview A.C.'s mother and determine whether A.C. should live with her in Washington state.

On July 7, 2015, the probation department recommended A.C. move to Washington to live with his mother, and the court granted permission. A.C. and his mother moved back to Los Angeles on January 1, 2016.

On October 13, 2016, when A.C. was 13 years old, the probation department filed a second section 777 notice, and on November 10, 2016, the District Attorney filed a supplemental section 777 notice alleging A.C. vandalized business and city property with graffiti. The court placed A.C. under CDP. On December 19, 2016, A.C. admitted count 1 of the October 13 notice (failure to complete community service hours). The court terminated the probation order, set maximum confinement at four years, and ordered A.C. detained in juvenile hall pending suitable placement. On December 28, A.C. was released to a group home.

A.C. was 14 years old on May 12, 2017, when he left the group home without permission. On May 16, the probation department filed the third section 777 notice and issued a bench warrant. Deputies arrested A.C. during a trespassing investigation on January 3, 2018. On January 4, A.C. admitted leaving the group home without permission, and the court detained A.C. in juvenile hall.

On February 15, 2018, A.C. admitted the vandalism/graffiti count in the supplemental section 777 notice filed November 10, 2016. The juvenile court continued his placement in juvenile hall.

On March 19, 2018, just after A.C. turned 15, he was placed at another group home, and the court granted an application for psychotropic medication on April 2. On April 5, A.C. left the group home without permission, and on April 6,

the probation department filed the fourth 777 notice and issued another bench warrant. On April 13, A.C. admitted he left the group home without permission, and the court returned him to the group home, warning the court “will not tolerate any further AWOLs.” The court granted another application for psychotropic medication on April 30.

On August 6, 2018, a fifth section 777 notice was filed and a bench warrant issued, reporting A.C. again left the group home without permission and failed to attend school.

A.C. self-surrendered on the bench warrant on March 1, 2019. He was 16 years old. He requested camp community placement, because he believed if he was sent back to the group home he would again leave without permission. The juvenile court set the matter for hearing on March 21, 2019.

On March 7, 2019, A.C. filed a motion to dismiss for lack of jurisdiction. SB 439, which had gone into effect January 1, 2019, amended section 602 to eliminate juvenile court jurisdiction over minors who, like A.C., were under 12 years old when they committed crimes other than the most serious offenses. A.C. argued SB 439 applied to his case (and all pending juvenile matters where the minor was under 12 when he committed his offenses) because his case was not yet final, requiring dismissal of the original petition filed when he was 10 years old. In opposition, the district attorney argued SB 439 was not retroactive, and the legislature intended the juvenile court to retain jurisdiction over minors like A.C.

At the hearing on March 21, 2019, the court asked counsel to address whether A.C.’s original sustained petition was final, given that A.C. did not appeal. A.C.’s counsel argued the judgment was not final while A.C. remained on probation.

The district attorney rejoined that juvenile probation was different from adult probation, and judgment had been entered against A.C. The court concluded the judgment against A.C. was final and therefore SB 439 did not apply retroactively. The court denied the motion to dismiss.

In setting the hearing on the probation violation for April 8, the juvenile court pointed out there had been no new petition filed since A.C. was 10 years old, and “he’s sort of been consumed by this process,” which itself had generated the rule violations keeping A.C. in the system for six years. “[T]his might be one of those situations where it’s worth taking a very close look at what if anything has happened useful during this time.”

A.C. appealed from the denial of the motion to dismiss. On April 8, 2019, the juvenile court ordered A.C. to be continued on the previous suitable placement order, granted 90 days predisposition credit, and dismissed the probation violation petition in the interest of justice. We deemed A.C.’s notice of appeal to be from the order of April 8, 2019.

### **DISCUSSION**

A.C. was 10 years old in 2013, when the wardship petition alleged he committed his offenses. He was 11 years old in 2014, when he admitted one count and the juvenile court sustained the petition. In 2013 and 2014, former section 602, subdivision (a) stated: “[A]ny person who is under the age of 18 years when he or she violates any law of this state . . . is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.”<sup>2</sup> The juvenile court thus had jurisdiction

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<sup>2</sup> Section 602 has always made an exception for minors who commit certain offenses listed in section 707, subdivision (b). As amended by SB 439, subdivision (b) of section 602 gives

over 10-year-old children under the statute then in effect. That changed when, effective January 1, 2019, the legislature, in SB 439 (2017-2018 Reg. Sess.), amended section 602 to state: “[A]ny minor who is between 12 years of age and 17 years of age, inclusive, when he or she violates any law of this state . . . is within the jurisdiction of the juvenile court, which may adjudge the minor to be a ward of the court.” Under the current version of section 602, as of January 1, 2019, the juvenile court does not have jurisdiction over minors who, like A.C., were under 12 years old when they committed their offenses.

A.C. argues the change in law effected by SB 439 reflects the legislature’s assessment that prosecuting minors under 12 years old was too severe, and so the legislature must have intended the new law to “apply to every case to which it constitutionally could apply.” He does not, however, argue (as he did in the trial court) that the change in law operates retroactively to justify the wholesale dismissal of the original petition in any case not yet final in which a child under 12 years old was charged under the earlier version of the statute.

Instead, A.C. argues a different basis under which the juvenile court lacked jurisdiction, contending the change in law must be incorporated in A.C.’s 2014 plea agreement even when the dispositional order is final. “Once section 602 is incorporated into that plea agreement, the court lacks jurisdiction and the plea becomes a nullity.” A.C. did not raise this issue in the trial court. Generally, an appellant forfeits arguments he or she could have

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the juvenile court jurisdiction over minors under 12 if they are alleged to have committed murder or listed forcible sex offenses. A.C.’s charged offense, assault with a deadly weapon, is not included in the offenses exempted from section 602.

made, but did not make, in the trial court. (*People v. Saunders* (1993) 5 Cal.4th 580, 589-590.) But A.C. argues the state lacked fundamental jurisdiction to charge him with offenses committed when he was 10 years old, and therefore the juvenile court was entirely without power to sustain the petition after accepting his admission to count 2. “‘[F]undamental jurisdiction cannot be conferred by waiver, estoppel, or consent. Rather, an act beyond a court’s jurisdiction in the fundamental sense is null and void’ *ab initio*. [Citation.] ‘Therefore, a claim based on a lack of . . . fundamental jurisdiction[ ] may be raised for the first time on appeal.’” (*People v. Lara* (2010) 48 Cal.4th 216, 224-225.)

In *Doe v. Harris* (2013) 57 Cal.4th 64, 66, our Supreme Court held: “That the parties enter into a plea agreement thus does not have the effect of insulating them from changes in the law that the Legislature has intended to apply to them.” Put otherwise, changes in the law “apply even to a defendant who entered into a plea agreement *if* the Legislature intended the change to apply to that defendant.” (*People v. King* (2020) 52 Cal.App.5th 783, 793.) Even treating A.C.’s admission to count 2 as equivalent to a negotiated plea agreement, A.C. still must show the Legislature intended SB 439 to apply retroactively to his case.

Under *In re Estrada* (1965) 63 Cal.2d 740, when the Legislature amends a statute to lessen the punishment for a crime, courts will assume, absent evidence to the contrary, that the Legislature intended the new law to extend “as broadly as possible” to all defendants whose judgments are not yet final. (*People v. Conley* (2016) 63 Cal.4th 646, 657; *People v. Brown* (2012) 54 Cal.4th 314, 323; *Estrada*, at p. 745.) Eliminating juvenile court jurisdiction over minors under 12 years old

constitutes an ameliorative change in the law within the meaning of *Estrada*. (*In re David C.* (2020) 53 Cal.App.5th 514, 519 (*David C.*)). In the absence of clear legislative intent to the contrary, we presume the Legislature intended the ameliorative change to apply to all cases in which a judgment is not yet final on appeal, including judgments based on plea agreements. (See *People v. Stamps* (2020) 9 Cal.5th 685, 698-699, 705.) If A.C.'s dispositional order is final, SB 439 does not apply retroactively to his case.

In supplemental briefing, A.C. argues that his case is not final because his continuing juvenile probation is akin to suspended imposition of sentence in adult probation, citing *People v. McKenzie* (2020) 9 Cal.5th 40 (*McKenzie*). A.C. also argues that even if the dispositional order is final, the juvenile court lost jurisdiction over him after January 1, 2019, the effective date of SB 439, citing the Fifth District decision in *David C.*

The facts in *David C.* are similar. The minor was 11 years old when the petition alleged he came within the juvenile court's jurisdiction by committing a series of criminal offenses. He admitted certain counts, and the court found he knew the wrongfulness of his conduct. When he was 12 years old, the court declared him a ward of the court, placed him on probation, and released him to the custody of his mother. He was still 12 when a section 777 notice alleged he had violated probation, he admitted the allegations, and the court reinstated probation. Shortly thereafter, on January 1, 2019, SB 439 went into effect. The minor was 13 years old when a second section 777 notice of violation alleged he committed new criminal offenses. His counsel moved to dismiss the case for lack of jurisdiction, and

the People asserted SB 439 did not apply retroactively because his case already was final. The juvenile court denied the motion to dismiss because the case was not pending trial or on appeal and therefore was final, so SB 439's amendment to section 602 did not apply. The minor admitted the probation violation allegations, and the court readjudged him a ward of the court and placed him on probation in the custody of the probation department. (*David C.*, *supra*, 53 Cal.App.5th at pp. 517-518.)

*David C.* concluded SB 439 applied retroactively under *Estrada* and *Lara* to nonfinal judgments. (*David C.*, *supra*, 53 Cal.App.5th at pp. 519-520.) But after the minor admitted the counts, he did not appeal from the dispositional order declaring him a ward of the court. Such a dispositional order is appealable, and the expiration of the time to appeal made the dispositional order final. "Nothing in the plain language of section 602, as amended by Senate Bill No. 439, or the legislative materials related to the amendment, suggests the Legislature intended to annul charges that were adjudicated, and wardship determinations that were made and became final judgments, before the statutory amendment went into effect. Accordingly, minor was not entitled to have the original charges and wardship determination dismissed." (*Id.* at p. 520.)

We agree with *David C.* As in that case, A.C. admitted a count in the petition and did not appeal the dispositional order. Although he remained on probation and was subject to several notices of violation, the wardship determination was final when SB 439's amendment to section 602 went into effect. A.C. is not entitled to the retroactive application of SB 439 and the dismissal of his original petition and wardship determination.

We also agree with *David C.* that *McKenzie* does not require a different result. In *McKenzie*, the adult defendant pleaded guilty and admitted prior convictions for sentence enhancement. The court suspended imposition of sentence and placed him on probation, but after probation was revoked, the court imposed a sentence including the enhancements. The defendant appealed and the judgment was affirmed. New legislation under which his prior convictions no longer qualified to enhance his sentence went into effect before the judgment reached disposition in the highest court with authority to review it, so the California Supreme Court concluded he was entitled to the benefits of the new law. (*McKenzie, supra*, 9 Cal.5th at pp. 43-45.) *McKenzie* does not control this case, which involves juvenile court jurisdiction and in which A.C. did not appeal from the dispositional order. (See *David C., supra*, 53 Cal.App.5th at p. 521, fn. 6.)

We do, however, agree with A.C.'s argument in supplemental briefing that the juvenile court lost jurisdiction over him on January 1, 2019, the effective date of revised section 602. While SB 439 does not apply retroactively to require dismissal of the original petition and dispositional order, "[t]his does not mean, however, that the juvenile court's jurisdiction now potentially continues." (*David C., supra*, 53 Cal.App.5th at p. 520.) SB 439 divested the juvenile court of jurisdiction as of January 1, 2019, over any minor who, like A.C. and the minor in *David C.*, was under 12 years of age when he violated the law, except for crimes not applicable here. "A plain reading of section 602, subdivision (a) makes it clear the juvenile court lost its continuing jurisdiction over minor at that point. Thus, any and all actions taken by the juvenile court after January 1, 2019,

that were based on the original petition—including the findings minor violated probation—were void for lack of jurisdiction.” (*David C.*, at pp. 520-521.) The Legislature took away juvenile court jurisdiction over such minors as of SB 439’s effective date. The juvenile court in this case lost jurisdiction over A.C. before it issued the April 8, 2019 order continuing A.C. in suitable placement and dismissing the fifth probation violation petition in the interest of justice.

We reject respondent’s contention that A.C.’s fifth section 777 probation violation notice alleged “unlawful acts” he committed when he was 15 years old, and thus allowed the court to exercise jurisdiction under the amended section 602. The section 777 notice alleged only rule violations (leaving the placement without permission and failing to attend school). Unlike in *David C.*, these were not criminal offenses that could be the basis for a new section 602 petition, so we do not consider respondent’s contention that *David C.* was wrongly decided on that point.

### **DISPOSITION**

The order denying A.C.'s "Notice of Motion to Dismiss for Lack of Jurisdiction" is affirmed insofar as the motion sought dismissal of all proceedings, including the adjudication of charges and wardship determination, occurring before January 1, 2019. The juvenile court is directed to prepare an order reflecting that jurisdiction terminated in this case, by operation of law, on January 1, 2019, and to transmit a certified copy of the order to the parties and the probation department.

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EGERTON, J.

We concur:

EDMON, P. J.

DHANIDINA, J.